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**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing)	
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Filing Date: February 17, 2021)	Case No.: PSH-21-0019
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_____)	

Issued: April 1, 2021

Administrative Judge Decision

Katie Quintana, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXXXXXX (hereinafter referred to as “the Individual”) to hold an access authorization under the United States Department of Energy’s (DOE) regulations, set forth at 10 C.F.R. Part 710, Subpart A, entitled “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”¹ As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual’s access authorization should not be granted.

I. Background

The Individual is employed by a DOE contractor in a position that requires him to hold a security clearance. In July 2019, the Individual completed an Electronic Questionnaire for Investigations Processing (e-QIP). Ex. 9. In response to one of the questions regarding psychological and emotional health, the Individual responded that he had never been diagnosed with bipolar mood disorder. *Id.* at 51. However, when the Local Security Office (LSO) confronted the Individual with information regarding a prior mental health diagnosis, he revealed in a December 2019 Letter of Interrogatory (LOI) that he had been diagnosed with Bipolar Depression, was using three prescription medications as treatment, and was seeking counseling from a Psychiatrist (Psychiatrist). Ex. 6. He later underwent a psychological evaluation by a DOE consultant psychologist (Psychologist) in January 2020. Ex. 7.

Due to unresolved security concerns related to the Individual’s psychological condition, the LSO informed the Individual, in a Notification Letter, that it possessed reliable information that created

¹ Access authorization is defined as “an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

substantial doubt regarding the Individual's eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information raised security concerns under Guideline I (Psychological Conditions) of the Adjudicative Guidelines. Ex. 1.

Upon receipt of the Notification Letter, the Individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the DOE Counsel submitted nine numbered exhibits (Exhibits 1-9) into the record and presented the testimony of the Psychologist. The Individual introduced nine lettered exhibits (Exhibits A-I) into the record, and presented the testimony of three witnesses, including himself. The exhibits will be cited in this Decision as "Ex." followed by the appropriate numeric designation. The hearing transcript in the case will be cited as "Tr." followed by the relevant page number.

II. Regulatory Standard

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

III. Notification Letter and Associated Security Concerns

As previously mentioned, the Notification Letter included a statement of derogatory information that raised concerns about the Individual's eligibility for access authorization. The information in the letter specifically cites Guideline I of the Adjudicative Guidelines. Guideline I relates to certain emotional, mental and personality conditions that can impair judgment, reliability, or trustworthiness. Guideline I at ¶ 27. An opinion by a duly qualified mental health professional that an individual has a condition that may impair judgment, stability, reliability, or trustworthiness can raise a security concern under Guideline I. *Id.* at ¶ 28(b).

As support for citing Guideline I, the LSO cited the Psychologist's report (Report), which concluded that the Individual met the Diagnostic and Statistical Manual of the American Psychiatric Association, Fifth Edition (DSM-5) criteria for Bipolar II Disorder. Ex. 1. Based upon the Psychologist's Report, the LSO noted that, despite the use of prescription medication, the Individual "continues to experience some highs and lows in terms of mood" and experiences "memory difficulties and lapses," attributable to a diagnosis of post-concussive syndrome. *Id.* The LSO cited the Psychologist's opinion that the "cycles and mood and memory/cognition symptoms are viewed as conditions that can impair [the Individual's] judgment, stability, reliability, and trustworthiness." *Id.*

IV. Findings of Fact

As stated above, the Individual underwent a psychological evaluation in January 2020. Ex. 7. Following the evaluation, the Psychologist issued the Psychologist's Report. *Id.* The Psychologist's Report noted that the Individual revealed that he had been diagnosed with Bipolar II Disorder by his treating Psychiatrist and had additionally been diagnosed with post-concussive syndrome, following a fall. *Id.* at 2. The Individual explained to the Psychologist that, as a result of the post-concussive syndrome, he feels that he "has some memory issues." *Id.* With regard to the Bipolar II Disorder, the Individual disclosed that he sees his Psychiatrist every four months and takes various prescription medications, on which he feels "good." *Id.* at 3. The Psychologist noted that the Individual reported "generally tak[ing] his medications reliably as prescribed[,] but that he will miss a dose when he is not on a set schedule." The Individual disclosed that he has missed a dose "quite a few times," and the longest he has been without medication is three days. *Id.*

Ultimately, the Psychologist determined that, despite the use of prescription medication, the Individual "continues to experience some highs and lows in terms of mood." *Id.* at 5. The Psychologist concluded that the "cycles and mood and memory cognition symptoms are viewed as a condition that can impair [the Individual's] judgment, stability, reliability, and trustworthiness." *Id.* He opined that the Individual should be "symptom-free" for a minimum of two years in order to be considered as "not having impaired judgment, instability or potential difficulties with reliability and trustworthiness." *Id.*

V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the Individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c) and the Adjudicative Guidelines. After due deliberation, I have determined that the Individual has not sufficiently mitigated the security concerns noted by the LSO regarding Guideline I. I cannot find that granting the Individual's DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). Therefore, I have determined that the Individual's security clearance should not be granted. The specific findings that I make in support of this Decision are discussed below. At the hearing, three witnesses testified on the Individual's behalf: a previous supervisor (Supervisor), the Psychiatrist, and the Individual himself. The Supervisor testified that, in her experience working with the Individual, he was timely, friendly and trustworthy. Tr. at 10. She

noted that she never observed the Individual engage in any concerning behavior or noticeable fluctuations in his mood. *Id.* at 11, 16.

The Psychiatrist testified that he had been treating the Individual as a patient for approximately six or seven years. *Id.* at 18. He noted that he initially began seeing the Individual due to “mood changes and some memory issues he was having.” *Id.* The Psychiatrist explained that he diagnosed the Individual with Bipolar Type II Disorder. *Id.* at 19. He further noted that he had also diagnosed the Individual with a “mild cognitive impairment,” resulting from short-term memory loss. *Id.* at 19. However, the Psychiatrist noted that this diagnosis has since been removed, as the Individual’s condition has improved over the previous 12 months. *Id.* at 19, 21, 30. The Psychiatrist reported that, at the Individual’s prior appointment in December 2020, the Individual reported that he “was not having any memory episodes.” *Id.* at 25.

The Psychiatrist stated that he typically meets with the Individual for 15 minutes, once every four months; however, since the Individual has engaged in the Administrative Review process for his security clearance, he has met with the Individual more often, sometimes as much as once per month. *Id.* at 19-20, 28, 29. He explained that the Individual uses three different prescription medications to control his Bipolar Disorder and engages in “as-needed psychotherapy.” *Id.* at 22. The Psychiatrist noted that the Individual has “been very stable for over a year using the medications” and is complying with all treatment recommendations. *Id.* at 23, 34. Specifically, the Psychiatrist stated that, as far as he was aware, the Individual had not skipped any doses of his medications. *Id.* at 42. He noted that a “significant part” of his medical analysis is based on the Individual’s self-reports, and he relies on those self-reports to determine if the Individual is compliant in taking his medication. *Id.* at 44-45. The Psychiatrist noted that, should the Individual miss one dose of his medication, it would not impact his stability; however, missing a week of his medication would “certainly” effect his stability. *Id.* at 42.

The Psychiatrist testified that, although he had not read the Psychologist’s Report, he understood that the Psychologist was “concerned about the memory mostly” and “that’s all [he] knew about it.” *Id.* at 27. He did, however, add that he felt that the Psychologist’s opinion that the Individual should be totally symptom-free for two years was not a reasonable request for a patient with Bipolar II Disorder. *Id.* at 27-28. The Psychiatrist interpreted the term “symptom-free” in the Psychologist’s Report as meaning being free of “any symptoms,” even those that the average person may experience. *Id.* at 35-36. He acknowledged that the Psychologist’s recommendation would be reasonable if the definition of “symptom free” was interpreted as being free from “clinically significant symptoms” of Bipolar II Disorder for a two-year period. *Id.* at 45. Ultimately, the Psychiatrist opined that the Individual maintains a “good” prognosis for Bipolar II Disorder, and the Bipolar II Disorder does not currently impair the Individual’s judgment or reliability. *Id.* at 27-28.

The Individual testified on his own behalf. He stated that he feels that his Bipolar II Disorder is stable, and his current medication regimen is helping him to remain stable. *Id.* at 52. He additionally added that the symptoms related to his cognitive impairment have also improved over the prior year. *Id.* The Individual reported that his last significant Bipolar II Disorder episode was over two years ago; however, he was unable to recall the details of the episode or any other previous

episode.² *Id.* at 65. The Individual explained that he has only met with his therapist twice, the last session being August 2020, and both sessions were on the recommendation of an audiologist and unrelated to his Bipolar II Disorder. *Id.* at 51-52, 67-68. He asserted that he is no longer experiencing any memory difficulties and maintained that he is always honest when reporting his symptoms and medication compliance to the Psychiatrist. *Id.* at 60-61.

When asked about the Psychologist's Report, the Individual noted that there were no factual inaccuracies. *Id.* at 63. He went on to testify that he has never missed a dose of his medication, even over a holiday break.³ *Id.* at 72. However, when confronted with the Psychologist's Report, indicating that he told the Psychologist that he had missed doses of his medication over the 2019-2020 holiday break, the Individual explained that it was a "misunderstanding." *Id.* at 73. He acknowledged that the Psychologist's Report was correct. *Id.* at 73. He stated that he did not recall reporting the missed doses to the Psychologist. *Id.* at 73. He additionally noted that he missed "a dose or two" as recently as January 2021 over the holiday break, despite setting a reminder alarm on his phone. *Id.* at 74, 78. Finally, when asked about answering "no" on the e-QIP to whether he had ever been diagnosed with a bipolar mood disorder, the Individual explained that in his mind, he thought [he] actually said yes" to the question.⁴ *Id.* at 86.

The Psychologist observed the hearing and listened to the testimony offered by the Individual and all other witnesses. He clarified that, in the Psychologist's Report, when he recommended that the Individual be "symptom-free" for a period of two years, he was referring to "clinical symptoms" that would impair the Individual's daily interactions or activities, not "average and expected mood elevations or decreases." *Id.* at 95, 109. The Psychologist testified that although the Individual does appear to have "increased in his stability" regarding his Bipolar II Disorder, he did not feel that the Individual had been stable for a sufficient period of time. *Id.* at 100.

The Psychologist elaborated, stating that the Individual revealed that he was not always taking his medication consistently, even after establishing interventions such as his reminder alarm. *Id.* The Psychologist testified that he found the missed doses particularly concerning because the "number one reason that people with bipolar disorder[s]...have difficulties is because they do not take their medication." *Id.* at 95. Even though the Individual reported skipping fewer than three doses in a row, the Psychologist noted that he believed the Individual was experiencing "memory concerns that might be impairing his ability to accurately remember whether he is remembering." *Id.* at 97. In support of this opinion, the Psychologist pointed to the Individual's difficulty remembering the details of his missed doses during the hearing. *Id.* The Psychologist expressed additional concern regarding the missed doses because the Individual did not appear to be providing his Psychiatrist complete and accurate information. *Id.* He noted that the Psychiatrist was unaware of any of the Individual's missed doses. *Id.* at 98. The Psychologist noted that the Individual "may simply not recall that he is skipping doses" or "he may not recall accurately whether or not he's having memory difficulties and may not convey that information accurately" to the Psychiatrist. *Id.*

² The Individual reported that his Bipolar II Disorder episodes do not impact his memory. Tr. at 66.

³ In response to five separate questions, the Individual denied missing any doses of his medication. See Tr. at 72.

⁴ I note that misrepresentations on forms like the e-QIP typically fall under the purview of Guideline E (Personal Conduct), which was not raised by the LSO in the Notification Letter, so is not at issue in this case.

Ultimately, the Psychologist opined that if, over the next year, the Individual could find an intervention to help him remember to take his medication and continued to improve with regard to his memory problems, the Individual may be able to mitigate the Psychologist's concerns. *Id.* at 100. However, at the time of the hearing, the Psychologist felt that the Individual had not demonstrated a sufficient period of being free of significant Bipolar II Disorder symptoms such that his judgment, reliability, and trustworthiness were intact. *Id.* at 121. Similarly, he did not believe that the Individual's memory problems had improved to the extent that they did not impair his judgment, reliability, or trustworthiness. *Id.* at 118.

Guideline I

Certain personality conditions can impair judgment, reliability, or trustworthiness. *See* Guideline I at ¶ 27. An opinion by a duly qualified mental health professional that an individual has a condition that may impair judgment, stability, or trustworthiness can serve as a disqualifying condition for a security clearance. *Id.* at ¶ 28(b). Additionally, behavior that casts doubt on an individual's judgment, stability, reliability, or trustworthiness, not covered by any other guideline and that may indicate an emotional, mental, or personality condition, may disqualify an individual from being eligible for a security clearance. *Id.* at ¶ 28(a).

An individual may be able to mitigate security concerns under Guideline I if the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan; the individual has voluntarily entered a counseling program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional; the individual obtains a recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation; or there is no indication of a current problem. *Id.* at ¶ 29 (a), (b), (c), (e).

Here, the Psychologist found that the Individual continued to exhibit concerning memory difficulties that could impair his judgment, reliability, or trustworthiness. These memory problems raise increased concerns due to their potential impact on his Bipolar II Disorder. During the hearing, the Individual exhibited clear memory problems. He was asked five times about his consistency in taking his medication, and he adamantly answered that he had never missed any doses. *See* Tr. at 72. Even when he was prompted about missing doses over a holiday break, the Individual did not change his answer. It was not until he was shown the Psychologist's Report that he began to remember missed doses and revealed additional missed doses as recently as several months ago. Additionally, despite setting alarms, the Individual is still unable to consistently take his medication.

Perhaps more concerning, however, is that the Individual Psychiatrist is completely unaware of the fact that the Individual has missed multiple doses on multiple occasions. Although the Individual's Psychiatrist has opined that the Individual's Bipolar II Disorder is stable and he does not exhibit memory problems, the Psychiatrist noted that he relies heavily on the Individual's self-reports in completing his analysis, and it is clear that the Individual is not providing the Psychiatrist with a complete and accurate description of his memory problems. While I recognize that the Individual

has asserted that he has never missed more than three doses of medication, which may not impact his stability, I am not convinced that this information is accurate due to the memory problems the Individual exhibited during the hearing regarding his medication.

Like the Psychiatrist, my conclusions are limited by the Individual's self-reports, as the Individual did not present any witnesses familiar with his daily routines. He did not present the testimony of anyone who could confirm that he has never missed more than three doses, that his memory problems are improving, or that his daily behaviors and moods are stable on his medications. Due to the Individual's impaired memory and the lack of corroboration, I cannot find that the Individual's testimony as accurate or reliable.

For these reasons, I cannot find that the Individual's memory problems do not cast doubt on the Individual's judgment, reliability or trustworthiness. *See* Guideline I at ¶ 28(a). Further, despite the Psychiatrist's opinion that the Individual does not have memory problems and that the Individual's Bipolar Disorder is stable on his medications, I find the Psychologist's contrary opinion to be more convincing for the reasons stated above. My observations are congruous with those of the Psychologist, and I cannot find that "there is no indication of a current problem." *Id.* at ¶ 29 (c). As such, I conclude that the Individual has not mitigated the security concerns under Guideline I.

VI. Conclusion

After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I have found that the Individual has not brought forth sufficient evidence to resolve the security concerns associated with Guideline I. Accordingly, I have determined that the Individual's access authorization should not be granted. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Katie Quintana
Administrative Judge
Office of Hearings and Appeals